



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2404214
Applicant Name: Mike Bennett of Lehigh Northwest Inc. for King County
Address of Proposal: 5225 East Marginal Way S

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development permit for dredging 8,200 cubic yards of sediment in a 500 x 100 sq. ft. area beneath and outside the existing dock in the Duwamish Waterway.

The following approval is required:

Shoreline Substantial Development Permit - To allow dredging in an Urban Industrial (UI) shoreline environment.(SMC [23.60.020](#) , [23.60.032](#) and [23.60.842](#))

SEPA - Environmental Determination - Chapter 25.05, Seattle Municipal Code

SEPA DETERMINATION: ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS

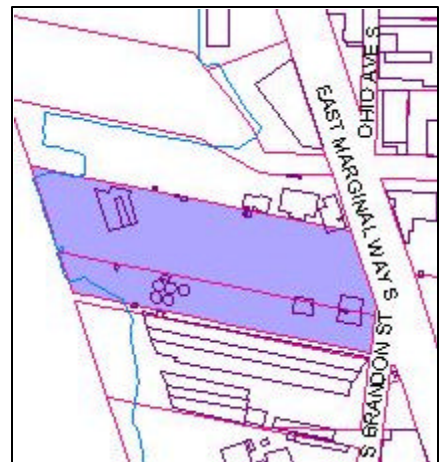
☒ DNS with conditions

☒ DNS involving non-exempt grading or demolition or
involving another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Description

The subject site is located at 5225 East Marginal Way S on the east side of the Duwamish River and is zoned Industrial General-1 (IG1-U/85), with an 85 ft. height limit and has a shoreline environment designation of Urban Industrial (UI). The Duwamish River flows into Elliot Bay and Puget Sound. The site is developed with an office building, ready-mix plant, cement terminal, pier and barge-unloading facility. The site is environmentally critical because it is liquefaction prone. Adjacent uses are primarily industrial; the Manson Construction Company is headquartered at the north end of the adjacent property.



Proposal Description

Lehigh Northwest proposes a one-time dredge of 8,200 cubic yards of accumulated gravel and sediments from an approximately 46,400 sq. ft. footprint (500' x 100') beneath and just outside of the dock structure. The footprint will be dredged from present depths as shallow as -9 feet mean lower low water (MLLW) to a uniform depth of -20 feet MLLW (plus 1 foot allowed overdredge).

The proposed dredge volume was divided into two surface Dredge Material Management Units (DMMUs) and one subsurface DMMU during the Puget Sound Dredged Disposal Analysis (PSDDA) full characterization. Sediments from one of the surface DMMUs (approximately 3,000 cy) was deemed unsuitable for open-water disposal. The other DMMUs were found to be suitable for open-water disposal at the PSDDA dumpsite in Elliott Bay. Sediment will be dredged using a barge-mounted clamshell dredge. Sediments deemed suitable for open-water disposal will be placed in dump barges for transport to an open water disposal site. Sediments deemed unsuitable for open-water disposal will be transferred to an upland facility for transport to an approved upland disposal site.

Public and Agency Comments

No public comments were received during the public comment period, which ended on August 20, 2004. However, to protect water quality King County Metro generally recommends that materials and construction methods should be used which prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after construction. Any construction debris floating in the water shall be promptly removed and if any dredging is proposed, use of a silt curtain or other construction techniques to contain silt should be employed.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

Section [23.60.030](#) of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

- A. *The policies and procedures of Chapter [90.58](#) RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter [173-27](#) WAC*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

Chapter [90.58](#) RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy seeks to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. The proposed dredging at Terminal 37/42/46 provides for the continued operation of a facility that is dependent upon its location in a shoreline of the state. This permitted use, minimizes, in so far as practical, any resultant damage to the ecology and environment, therefore; the subject application is consistent with the procedures outlined in RCW [90.58](#).

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on ensuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter [23.60](#), that also incorporates the provisions of Chapter [173-27](#), WAC. [Title 23](#) of the Municipal Code is also referred to as the Land Use and Zoning Code. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions which have also been set forth in the Land Use Code.

In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the relevant criteria set forth in the Land Use Code. The Shoreline Goals and Policies, part

of the Seattle [Comprehensive Plan](#), and the purpose and locational criteria for each shoreline environment must be considered. A proposal must be consistent with the general development standards of section [23.60.152](#), the specific standards of the shoreline environment and underlying zoning designation, any applicable special approval criteria, and the development standards for specific uses.

The proposed development actions occur on land classified as a waterfront lot (SMC [23.60.924](#)) and is located within an Urban Industrial (UI) shoreline environment. The proposed improvements are associated with a marine cargo facility and as such are a permitted use in the UI shoreline environment and the underlying IG-1 zone.

Shoreline Policies

All discretionary decisions in the shoreline district require consideration of the Shoreline Goals and Policies, which are part of the Seattle Comprehensive Plan's [Land Use Element](#), and consideration of the purpose and locational criteria for each shoreline environment designation contained in SMC [23.60.220](#). The policies support and encourage the establishment of water dependent uses existing at the site (please refer to Land Use Policies [L339](#) and [L342](#)). An area objective for this portion of the Duwamish waterways is to reserve waterfront lots for major port terminals while at the same time to protect and enhance migratory fish routes and feeding areas (please refer to Area Objectives for Shorelines of Statewide Significance, Policy [L354 1d](#)). The purpose of the Urban Industrial (UI) environment as set forth in Section [23.60.220 C11](#) is to provide for efficient use of industrial shorelines for water-related uses, such as but not limited to concrete plants.

The proposed berth maintenance dredging of the site would facilitate the continued and enhanced operation of an existing concrete plant (heavy manufacturing), a use supported by both the purpose of the UI shoreline environment and the policies set forth in the Land Use Element of the Comprehensive Plan.

SMC [23.60.152](#) - Development Standards for all Environments

These general standards apply to all uses in the shoreline environments. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. All shoreline development and uses are subject to the following:

- A. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as ... fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.

- B. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.
- C. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage ...
- D. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak-proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
- E. All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catch-basins or settling ponds, interceptor drains and planted buffers.
- F. All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.
- G. All shoreline developments and uses shall control erosion during project construction and operation.
- H. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.
- I. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.
- J. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.

- K. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.
- L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.
- M. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.
- N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.
- O. Navigation channels shall be kept free of hazardous or obstructing development or uses.
- P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corps of Engineers.

Per 23.60.152 D and N no deleterious material is allowed to enter the water during the proposed work. Therefore to meet these general development standards the project is conditioned to include the implementation of construction and dredging best management practices (BMPs) that prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after the proposed work.

Additionally, dredging material and equipment pose some potential danger of water contamination. The contamination could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, it is necessary to condition the project to require that prior to commencing dredging; a Spill Prevention, Containment and Countermeasures (SPCC) plan shall be developed. During the dredging operations this plan shall be implemented and all necessary equipment for clean up of toxic spills shall be kept on site during the proposed work.

The proposal is subject to a Hydraulics Project Approval ([HPA](#)) permit from the Washington State Department of Fisheries and Wildlife.

As proposed and conditioned the project complies with the above shoreline development standards. As conditioned, the short term construction related activities should have minimal effects on migratory fish routes.

SMC. 23.60.842 – Special Uses Permitted on Waterfront Lots in the UI Environment

The applicant is proposing to dredge in a UI environment, which is only permitted if the project complies with the special use criteria in SMC 23.60.032. The applicant has provided an analysis of the criteria, which is located in the project file. Thus, the proposed use meets the applicable criteria and is approved.

SMC [23.60.870](#) – Development standards for the UI Environment

The proposal conforms to all of the development standards for the UI environment.

Conclusion

SMC Section [23.60.064 E](#) provides authority for conditioning of shoreline substantial development permits as necessary to carry out the spirit and purpose of and assure compliance with the Seattle Shoreline Code, Chapter [23.60](#), and with RCW [90.58.020](#) (State policy and legislative findings).

WAC [173-27](#) establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW [90.58](#). It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology ([DOE](#)). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter [23.60](#) is also consistency with WAC [173-27](#) and RCW [90.58](#).

Thus, as conditioned below, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit is **CONDITIONALLY GRANTED**.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant's agent, dated June 4, 2004. The information in the annotated checklist, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision. The potential environmental impacts identified in the environmental checklist are discussed below where mitigation under Seattle's SEPA Ordinance is warranted.

Short - Term Impacts

Dredging Impacts

Dredging activities results in the following adverse impacts: limited localized erosion of the bottom sediments; water degradation including an increase in turbidity, a decrease in dissolved oxygen levels and an increase in levels of contamination in the water column, chiefly petroleum hydrocarbons, heavy metals, and polychlorinated biphenyls (PCBs); increased energy consumption, potential petroleum-derived fuels and lubricant spills; increased noise, and increased truck trips.

The above short term dredging related impacts are mitigated by existing State, and Federal regulations. Specifically, these are the U.S. Army Corps of Engineers (USACE) Section 10/404 Permits; Washington Department of Fish and Wildlife (WDFW), Hydraulic Project Approval (HPA) including assuring dredging is not done during the salmonid juvenile migration period and construction impacts are mitigated; Washington State Department of Ecology (DOE) Section 401 Water Quality Certification (401 Certification); Washington State Department of Natural Resources (DNR) requiring an Open Water Disposal Permit and a Puget Sound Dredging Disposal Analysis (PSDDA). The latter is joint agreement between the US Environmental Protection Agency (EPA) USACE, DOE and DNR. Due to the regulatory requirement of the above state and federal governments, the majority of the impacts will be mitigated (See SEPA 25.05.660 and 25.05.665). Therefore additional conditions for this project will be limited.

Water Quality

Dredging can cause increased turbidity in the water column, which can lead to negative impacts on aquatic organisms. To minimize the increase in turbidity Lehigh will be implementing best management practices that will be followed during dredging activities. These measures will minimize the increase in turbidity during the proposed work.

Long - Term Impacts

Earth

The proposed dredging activity includes excavation of approximately 8,200 cubic yards of accumulated gravel sediments. The sediments proposed for excavation were evaluated consistent with state and federal criteria for determining the potential for chemical contamination in marine sediments, including contaminant level screening analyses and criteria implemented by the Dredged Material Management Program, Puget Sound Dredged Disposal Analysis. The sediments proposed for removal include: (1) approximately 3,000 cubic yards of sediments expected to be ineligible for open water disposal, requiring removal to a controlled upland receiving site and (2) approximately 5,200 cubic yards of sediments with contamination levels below established screening and sediment quality thresholds. Open

water disposal of the latter is proposed as appropriate. Dewatering of contaminated dredged sediments at the selected dredged material receiving site will be accomplished without discharge to surface water in the East Waterway. All water released from dredged sediments transferred to the selected upland receiving and transshipment site will be collected and pre-treated before being discharged to the sanitary sewer. No adverse impacts are anticipated, thus, further mitigation is not warranted.

Animals

Juvenile Chinook salmon and bull trout are expected to be absent or present in relatively low numbers during the proposed maintenance dredging activities. Adult and sub-adult salmonids (including larger juvenile chinook) may be present during this time. Sub-adult and adult salmonids are expected to avoid areas where dredging is occurring, and the proposed project is considered to entail a negligible risk of mortality or injury of Chinook salmon and bull trout. Implementation of the project is not expected to result in water quality conditions that are dangerous to salmonids, and no adverse water quality effects on salmonids are likely to occur.

Additional long term aquatic impacts include a decrease in diversity and abundance of benthic and epibenthic organisms in the dredged area.

Bald eagles may be present in the action area. The birds that have been observed near the action area appear to be habituated to human presence and activity, but would be expected to avoid sites where dredging equipment is operating. Therefore, the berth maintenance-dredging project is unlikely to result in mortality or injury of bald eagles. Because of their general tolerance of activity and the size of their foraging territories, the short-term, temporary disturbance of bald eagles is not expected to adversely affect the foraging success of this species. The proposed project would have no effect on bald eagle nesting habitat.

Per 23.05.665 DPD has consulted orally and in writing with Washington Department of fish and wildlife habitat biologist regarding the potential impacts and mitigation for this project and is deferring to this agency to provide sufficient mitigation for the above impacts.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impacts upon the environment. An EIS is not required under RCW 43.21C.030(2)(c).

- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT

Prior to Issuance of Master Use Permit

1. A Spill Prevention, Containment and Countermeasures (SPCC) Plan shall be prepared and submitted to DPD.

During Dredging

2. Best Management Practices shall be implemented to prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after the proposed work.
3. Spill prevention and response material as listed in the Spill Prevention, Containment and Countermeasures Plan, shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.

CONDITIONS - SEPA

Conditions of Approval

The following conditions(s) to be enforced during dredging shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the Master Use Permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the dredging.

4. Per 25.05.665 E, DPD is deferring to Washington Department of Fish and Wildlife to provide sufficient mitigation for the projects impacts. Therefore the conditions of the Hydraulic Project Approval permit shall be conditions of this Master Use Permit

Signature: _____ (signature on file) Date: January 3, 2005
Bryan Stevens
Land Use Planner